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4 The Honorable Barbara J. Rothstein  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE  
10 (PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

CASE MANAGEMENT ORDER  
NO. 17 REMAND OF CASES

11 \_\_\_\_\_  
12 This document relates to all  
13 actions.  
14

15 **I. INTRODUCTION**

16 Proceedings in this MDL 1407 began in earnest with the Order  
17 re Initial Conference dated November 1, 2001, requiring plaintiffs  
18 and defendants to submit proposed committee rosters, and scheduling  
19 the initial conference in this MDL for November 16, 2001. Since  
20 then: (1) generic fact discovery (including written discovery,  
21 document production and review, discovery depositions, and requests  
22 for admissions) has been completed or substantially completed as to  
23 most MDL defendants for which "common benefit" discovery is being  
24 undertaken by the Plaintiffs; (2) a procedure for case-specific  
25 fact discovery in each case has been implemented, and discovery  
26 pursuant thereto in cases subject to these MDL proceedings has been

1 underway since 2002; (3) Rule 26 disclosures of generic experts  
2 have been made, discovery depositions of those experts are  
3 complete; and a process has been established to permit the adoption  
4 of those experts' opinions in other cases transferred or being  
5 transferred to this MDL; (4) trial preservation depositions of  
6 several of plaintiffs' and defendants' generic experts are underway  
7 or have been taken; (5) and *Daubert* motions challenging plaintiffs'  
8 generic medical experts' opinions as to general causation,  
9 briefing, and hearings on said motions are now complete, and the  
10 Court has issued its Decision on said motions.

11       Given the foregoing, the Court is satisfied that this Multi-  
12 District Litigation has sufficiently matured, such that qualified  
13 cases may now be considered by the Court for purposes of issuing a  
14 Suggestion of Remand to facilitate their remand by the Judicial  
15 Panel on Multidistrict Litigation ("JPML") to their transferor  
16 courts for further case-specific proceedings and final disposition,  
17 subject to the following procedures and conditions:

18 **II. REMAND CRITERIA- RIPENESS**

19       Generic fact discovery of defendants was required to be  
20 completed within specific time periods, as set forth in CMO No. 1,  
21 subject to certain extensions of time. Discovery as to experts on  
22 general causation, and issues of general applicability, was  
23 required to be completed by no later than March 10, 2003, with  
24 subsequently transferred cases subject to the provisions of CMO No.  
25 9, providing for the adoption of or designation of experts on  
26 issues of general applicability. Case-specific fact discovery of

1 plaintiffs in each case subject to these MDL proceedings was  
2 required to be completed within specific time periods depending on  
3 when each case was docketed in these proceedings, as set forth in  
4 CMO Nos. 6 and 6A.

5 In any case docketed in this MDL, a case will only be  
6 considered ripe for remand if the case is in compliance with CMOs  
7 Nos. 1, 6, 6A, 10, 13, 13A, 15, and any additional orders entered  
8 by this Court, and all other generic fact and expert discovery  
9 permitted in this MDL as to the parties to that case is time  
10 barred. Specifically, all of the following criteria must be  
11 completed and/or fulfilled before a case will be considered ripe  
12 for remand:

13 . Plaintiff's fact sheet must be substantially complete per CMO  
14 Nos. 6 and 6A and all identified deficiencies must be corrected  
per CMO Nos. 6, 6A and 10;

15 . Plaintiff has executed all appropriate authorizations,  
16 including new HIAA-compliant authorizations if requested by  
defendants, as required by CMO Nos. 6 and 6A;

17 . Any permitted and timely filed discovery propounded by  
18 defendant pursuant to CMO Nos. 6, 6A, or 10 shall be completed  
with no discovery disputes remaining unresolved;

19 . The deadline, as the same may have been extended by stipula-  
20 tion or Court order, for case-specific fact discovery must have  
21 passed and not be subject to any extensions under CMO Nos. 6, 6A  
22 or 10, except that this requirement will be deemed fulfilled  
even if the case-specific fact discovery deadline has not passed  
as long as that deadline, with any extensions, is on or before  
December 31, 2003;

23 . If applicable to the case, plaintiff must have complied with  
24 the requirements of CMO No. 13 in order to provide defendants  
not identified the opportunity to file, and the Court to rule  
upon, dismissals in such cases per CMO No. 13A;

25 . If applicable to the case, plaintiff must have complied with  
26 the requirements of CMO No. 15 and any additional orders  
entered by this Court;

1     • The deadline for adopting or identifying generic experts per  
2     CMO No. 9 has passed;

3     • Any summary judgment motion arising from the Court's *Daubert*  
4     Order entered June 18, 2003, applicable to the case must have  
5     been ruled upon.

### 6     **III.     REMAND PROCEDURE**

#### 7         **A.     Petition for Suggestion of Remand Order**

8         At any time after a case is ripe for remand, counsel of record  
9         for any party to the case may file a Petition for Suggestion of  
10        Remand Order ("Petition") in the form attached hereto. Counsel of  
11        record shall not file a Petition unless they can certify in good  
12        faith that the case/s for which remand is sought is or are ripe for  
13        remand. Petitioning counsel shall serve a copy of the Petition upon  
14        Plaintiffs' Liaison Counsel Lance Eugene Palmer, Defendants'  
15        Liaison Counsel D. Joseph Hurson and Defendants' Liaison Counsel  
16        Douglas A. Hofmann (hereinafter, "liaison counsel"), as well as  
17        counsel of record in the case sought to be remanded. To the extent  
18        possible, service upon liaison counsel should be electronic. In  
19        order for a case to be considered at a Remand Conference as  
20        "eligible for remand," a Petition must be filed thirty (30) days  
21        prior to the date of the Remand Conference.

#### 22        **B.     Objections and Responses**

23        A party to the case may file a written objection to the  
24        Petition within twenty (20) days of the date the Petition was  
25        filed, which objection shall be limited to ten (10) double-spaced  
26        pages. Any party may object to the Petition, including objections  
      based upon any of the criteria set forth in Section II, above. The

1 written objection shall identify all reasons why the case is not  
2 ripe for remand. Within five (5) days of the filing of an  
3 opposition, the petitioning party may file a response that shall be  
4 limited to five (5) pages. Objections and responses must be served  
5 on liaison counsel, as well as counsel of record in the case sought  
6 to be remanded. To the extent possible, service upon liaison  
7 counsel should be electronic. There shall be no hearings permitted  
8 on any given Petition except by leave of court.

9 **C. Eligibility for Remand**

10 Any case in which a Petition has been filed will be deemed  
11 "eligible for remand" if (a) no written objection is filed within  
12 twenty (20) days of the filing of the Petition or (b) upon the  
13 Court overruling any written objection to the Petition. As stated  
14 above, in order for a case to be considered at a particular Remand  
15 Conference as "eligible for remand," the Petition must be filed  
16 thirty (30) days prior to the date of the Remand Conference.

17 **D. Database of Cases Deemed Eligible for Remand**

18 The parties shall cooperate in preparing and maintaining a  
19 database of all cases deemed "eligible for remand" which shall  
20 contain the following data as to each case: case caption,  
21 transferor court, date of original filing, date of docketing in  
22 this MDL, date of injury, specific type of injury claimed, identity  
23 of all defendants, estimated length of trial, and the parties'  
24 election regarding the alternative dispute resolution requirement  
25 as set forth in CMO No. 18. The parties shall provide the updated  
26 database in electronic spreadsheet format to the Court five (5)

1 days prior to any Remand Conference, and as the Court otherwise  
2 requires.

3 **E. Remand Conferences**

4 The Court shall schedule and conduct periodic Remand Confer-  
5 ences to determine which cases deemed "eligible for remand" as of  
6 the date of each Remand Conference are to be named in a Suggestion  
7 of Remand Order to be issued and forwarded to the JPML pursuant to  
8 JPML Rule 7.6 immediately following each Remand Conference. The  
9 first Remand Conference shall be conducted on January 23, 2004 at  
10 9 a.m. The Court will inform the parties of the location of the  
11 first Remand Conference as soon as possible. Plaintiffs and  
12 Defendants Steering Committees may, no later than five days prior  
13 to any scheduled Remand Conference, submit memoranda to the Court  
14 setting forth their respective views regarding the appropriate  
15 determination by the Court.

16 **E. Order of Remand**

17 Once an Order of Remand by the JPML is filed with the clerk of  
18 this transferee court, all case files and materials will be  
19 transferred to the transferor court. Within seven (7) days of the  
20 filing of an Order of Remand by the JPML, the parties will submit  
21 a joint proposed Final MDL Pretrial Order for the Court's signa-  
22 ture. Such order should describe the events that have taken place  
23 in MDL 1407 and those items that require further action by the  
24 transferor court. A copy of the Final MDL Pretrial Order will be  
25 provided, along with the case file and materials, to the transferor  
26 court for its information and benefit.

1  
2 DATED this 18<sup>th</sup> day of November, 2003.

3 /s/ Barbara Jacobs Rothstein  
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5 HONORABLE BARBARA JACOBS ROTHSTEIN  
6 UNITED STATES DISTRICT JUDGE  
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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE  
10 (PPA) PRODUCTS LIABILITY  
11 LITIGATION,  
12  
13

MDL NO. 1407

PETITION FOR SUGGESTION  
OF REMAND ORDER

14  
15 This document relates to the  
16 following actions: [insert  
17 case name(s) and docket  
18 number(s)]  
19

20 The below-signed counsel of record in the following  
21 case(s):  
22

23 [insert case name(s) and docket number(s)]  
24  
25

26 hereby certifies to the Court in good faith that the  
described cases(s) has/have completed case-specific fact  
discovery, and that all other generic fact and expert  
discovery as to each defendant is complete or time-  
barred, and otherwise is/are ripe for remand to its/their  
transferor courts for further proceedings and



disposition.

DATED at this \_\_ day of \_\_\_\_\_, 200\_\_.

Respectfully Submitted,

\_\_\_\_\_  
Name

Firm

Address/ Phone